

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on October 20, 2008. The Office Action provided a three-month shortened statutory period in which to respond, ending on January 20, 2009. Accordingly, this amendment is timely submitted. No fees are believed due with this Amendment. The Director is authorized to charge any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 112701-703 on the account statement.

Claims 1-15 are pending in this application. In the Office Action, Claim 1 is objected to. Claim 5 is rejected under 35 U.S.C. §112. Claims 1-3, 6 and 8-15 are rejected under 35 U.S.C. §102. Claims 1-15 are rejected under 35 U.S.C. §103. Applicants do not acquiesce in the correctness of the rejections or objections and reserve the right to present specific arguments regarding any rejected or objected-to claims not specifically addressed. Further, Applicants reserve the right to pursue the full scope of the subject matter of the claims in a subsequent patent application that claims priority to the instant application.

In response, Claims 1, 5 and 10-15 have been amended and Claims 3-4 have been canceled without prejudice or disclaimer. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claim 1 is objected to for the recitation "composition comprising a protein source of digestible carbohydrates." See, Office Action, page 2, lines 3-7. In response, Claim 1 has been amended for clarification purposes to recite, in part, a protein source, a source of digestible carbohydrates and a source of dietary fibre. The amendment does not add new matter. The amendment is supported in the specification at, for example, page 3, lines 8-12. For at least the above-mentioned reasons, Applicants respectfully submit that the objection to Claim 1 is now rendered moot.

Accordingly, Applicants respectfully request that the objection to Claim 1 be reconsidered and withdrawn.

In the Office Action, Claim 5 is rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Patent Office asserts that Claim 5 recites the limitation “the soluble fiber” but there exists insufficient antecedent basis for this limitation in the claim. See, Office Action, page 2, lines 13-17. In response, Applicants note that Claim 1 has been amended to recite, in part, a liquid or powdered and reconstitutable nutritional composition comprising a source of dietary fibre, wherein the source of dietary fiber comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides. As such, Claim 5 has now been amended to recite, in part, the composition according to Claim 1 wherein the insoluble fibre is provided by pea outer fibre and oligosaccharides are fructooligosaccharides. In view of the amendments to Claim 1, Applicants respectfully submit that the rejection of Claim 5 under 35 U.S.C. §112, second paragraph is now rendered moot.

Accordingly, Applicants respectfully request that the rejection of Claim 5 be reconsidered and withdrawn.

In the Office Action, Claims 1-3, 6 and 8-15 are rejected under 35 U.S.C. §102(b) as anticipated by WO 02/39834 to Spivey-Krobath et al. (“*Spivey-Krobath*”). In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that *Spivey-Krobath* is deficient with respect to the present claims.

Currently amended independent Claim 1 recites, in part, a liquid or powdered and reconstitutable nutritional composition comprising a source of dietary fibre, wherein the source of dietary fiber comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides. Currently amended independent Claims 10-15 recite, in part, methods comprising administering a composition comprising a source of dietary fibre, wherein the source of dietary fiber comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides. The amendments do not add new matter. The amendments are supported in the specification at, for example, page 5, lines 21-31. Malnutrition or gastro-intestinal disorders, more generally gut-discomfort or pain, may simply be the consequence of unhealthy or unbalanced nutritional behavior. However,

malnutrition may also affect perfectly healthy people, be it due to increased energy expenditure, as is the case with athletes or other sportsmen following intensive physical exercise, be it in other circumstances such as pregnancy. The occurrence of malnutrition in various situations during life, in particular with elderly or ill people, has thus led mainly to high calorie and high nutrient compositions. Consumption of such compositions, however, was often problematic, especially in patients with unbalanced gut flora and with gut impairment, because of gut pain or discomfort. See, specification, page 1, line 20-page 3, line 6. Further, as is shown by the Example at pages 12-15, a composition including acacia gum as a soluble fiber in addition to an insoluble fiber and oligosaccharides demonstrated good shelf-stability for 8 months and was judged to have a good taste. The composition was also rich in fiber and improved intestinal transit, gut flora and gut comfort. See, specification, Example, pages 12-15. Therefore, the present invention provides a nutritional composition that has a high energy content and improves digestive tract health. In contrast, Applicants respectfully submit that *Spivey-Krobath* fails to disclose or suggest each and every element of the present claims.

*Spivey-Krobath* fails to disclose or suggest a nutritional composition comprising a source of dietary fibre, wherein the source of dietary fiber comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides as required, in part, by currently amended independent Claims 1 and 10-15. Instead, *Spivey-Krobath* is primarily directed toward a nutritional composition for the prevention or treatment of an immune condition and fails to disclose or suggest any specific composition for a source of dietary fiber that comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides. See, *Spivey-Krobath*, Abstract. Indeed, the Patent Office even admits that “[*Spivey-Krobath*] does not explicitly disclose a source of fiber comprising the recited ratios.” See, Office Action, page 6, lines 9-11. As such, *Spivey-Krobath* fails to disclose or suggest each and every element of currently amended Claims 1 and 10-15 and the dependent claims that depend therefrom.

Accordingly, Applicants respectfully request that the rejection of Claims 1-3, 6 and 8-15 under 35 U.S.C. §102(b) to *Spivey-Krobath* be reconsidered and withdrawn.

In the Office Action, Claims 4-5 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Spivey-Krobath* in view of U.S. Patent No. 6,489,310 to *Brassart* et al ("Brassart"). Claim 7 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Spivey-Krobath*. Claims 1-4 and 6-15 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Brassart*. Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Brassart* in view of *Spivey-Krobath*. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the cited references are deficient with respect to the present claims.

As discussed above, currently amended independent Claim 1 recites, in part, a liquid or powdered and reconstitutable nutritional composition comprising a source of dietary fibre, wherein the source of dietary fiber comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides and currently amended independent Claims 10-15 recite, in part, methods comprising administering a composition comprising a source of dietary fibre, wherein the source of dietary fiber comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides. In view of the amendments and/or for at least the reasons set forth below, Applicants respectfully submit that the cited references fail to disclose or suggest every element of the present claims.

For example, neither *Spivey-Krobath* nor *Brassart* disclose or suggest a nutritional composition comprising a source of dietary fibre, wherein the source of dietary fiber comprises 20-40% by weight acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides as required, in part, by the present claims. Instead, and as described above, *Spivey-Krobath* is primarily directed toward a nutritional composition for the prevention or treatment of an immune condition. See, *Spivey-Krobath*, Abstract. Similarly, *Brassart* is entirely directed toward an enteral composition that contains a protein source, a lipid source, a carbohydrate source and a fiber blend. See, *Brassart*, Abstract. At no place in the disclosure, however, does *Brassart* even mention acacia gum, let alone a nutritional composition comprising 20-40% acacia gum, 30-60% by weight of insoluble fiber and 20-40% by weight of oligosaccharides as is required, in part, by the present claims. Indeed, the Patent Office even

admits that “[Brassart] does not explicitly disclose that the soluble fiber is acacia gum.” See, Office Action, page 12, lines 19-20.

The Patent Office asserts that “it would have been obvious to one of ordinary skill in the art at the time of the invention to have used acacia gum as the soluble fiber in the fiber blend of *Brassart* et al. because doing so would amount to nothing more than the use of a known soluble fiber source for its intended use in a known environment to accomplish entirely expected results.” See, Office Action, page 12, line 21–page 13, line 5. However, Applicants respectfully disagree. In contrast, Applicants note that, as discussed above, the Example in the specification at pages 12-15 clearly illustrates that the use of acacia gum as a soluble fiber, in addition to an insoluble fiber and oligosaccharides, in a nutritional composition demonstrated good shelf-stability for 8 months and was judged to have a good taste. The composition was also rich in fiber and unexpectedly improved intestinal transit, gut flora and gut comfort. See, specification, Example, pages 12-15. Further, in contrast to the Patent Office’s assertion that the use of acacia gum results in “entirely expected results,” Applicants respectfully submit that the cited references fail to even mention the unexpected benefits of improved intestinal transit, gut flora and gut comfort provided by use of the presently claimed composition. For at least the above-mentioned reasons, Applicants respectfully submit that *Spivey-Krobath* and *Brassart* fail to disclose each and every element of the present claims.

Accordingly, Applicants respectfully request that the obviousness rejection of Claims 1-15 under 35 U.S.C. §103(a) be reconsidered and withdrawn.

Appl. No. 10/564,452  
Reply to Office Action dated October 20, 2008

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims that could be clarified in a telephonic interview, the Patent Office is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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Dated: January 14, 2009